

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERRILL WARBOYS and KATHRYN
WARBOYS,

Plaintiffs,

v.

SHI-III BRIARCLIFF REIT, LLC;
BRIARCLIFF MANOR INVESTORS, LLC;
ANDRON CONSTRUCTION CORP.; and
VISTA CONSTRUCTION & LANDSCAPE
CONTRACTORS, INC.,

Defendants.

12/16/2019
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ORDER

19 CV 2491 (VB)

On December 9, 2019, plaintiffs requested a pre-motion conference regarding their anticipated motion to compel defendants SHI-III Briarcliff Reit, LLC, Briarcliff Manor Investors, LLC, and Andron Construction Corp. to respond to their first set of interrogatories and for sanctions pursuant to Fed. R. Civ. P. 37. (Doc. #64).

The same day, the Court deferred ruling on the request, ordering the three defendants to respond to plaintiff's letter by December 16, 2019, and urging the parties to resolve this matter without the need for Court intervention. (Doc. #65).

Defendants failed to file a letter in compliance with the Court's December 9 Order or seek further time in which to do so. Thus, the Court granted plaintiffs' request for leave to move to compel and for sanctions and set a briefing schedule regarding the anticipated motion. (Doc. #66).

Plaintiffs moved to compel on January 3, 2020. (Doc. #67). Plaintiffs requested the Court compel defendants to provide complete answers to plaintiffs' demand for interrogatories, "and caution[] these defendants that a failure to provide complete discovery responses at least one week prior to scheduled deposition of defendants could result in the entry of an Order striking their answer, or in the alternative that the matters embraced in plaintiffs' Demand for Interrogatories . . . be taken as established for the purposes of the action as plaintiff claims, and for such other relief as is just." (Doc. #70).

Defendants opposed the motion to compel on January 13, 2020. (Doc. #71). Defendants aver they have responded to plaintiffs' interrogatories and supplemented their responses to discovery requests.

Plaintiffs submitted a reply affidavit stating defendants' additional responses to plaintiffs' interrogatories were inadequate. (Doc. #72).

Accordingly, it is HEREBY ORDERED:

1. Plaintiffs' motion for sanctions is DENIED WITHOUT PREJUDICE. Defense counsel's conduct thus far has been less than professional, including failing to comply with the Court's December 9, 2019, Order (Doc. #65), requiring defendants to respond to plaintiffs' pre-motion letter, without excuse or explanation. However, defendants have supplemented their responses to plaintiffs' interrogatories and requests for production of documents. (Doc. #71). Moreover, plaintiffs' motion for sanctions merely asks the Court "caution[]" defendants, and does not actually seek relief in the form of sanctions. (Doc. #70). Therefore, the Court will not impose sanctions at this time.

2. As for plaintiffs' motion to compel, the Court will refer this case by separate Order to Magistrate Judge Davison for general pre-trial supervision, including to resolve the motion to compel and the pending motion for leave to commence a third-party action. (Doc. #59).

3. Magistrate Judge Davison also will have the authority to extend discovery deadlines, including the date for the completion of all discovery, as necessary.

Dated: January 16, 2020
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge